TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 81

THE UNITED STATES OF AMERICA,
APPELLANT,

vs.

MRS. MARIA MELITONA SANCHEZ and
ARMAND MOTA

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

FILED MAY 24, 1950

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1 (Caption omitted)

3 In the United States District Court
For the Northern District of Illinois
Eastern Division
No. 49 C 298

UNITED STATES OF AMERICA, PLAINTIFF,
v.
MRS. MARIA MELITONA SANCHEZ and ARMAND MOTA,
DEFENDANTS.

Complaint—Filed February 21, 1949

NOW COMES the United States of America by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois and for claim against the above-named defendants, and each of them, alleges as follows:

I.

This action has been authorized by the Commissioner of Internal Revenue and is being brought under the direction of the Attorney General of the United States.

II.

The defendants reside in the City of Chicago, County of Cook and State of Illinois.

III.

During all times hereinafter mentioned the plaintiff has been and now is a corporation sovereign and body politic.

IV.

On February 27, 1943, said Commissioner assessed the amount of $8,701.65 upon transfers of marihuana made by the above-named defendants on the 13th, 14th and 16th days of January, 1943. No part of said assessment has been paid.

WHEREFORE, the plaintiff demands judgment against the defendants, and each of them, for the amount of $8,701.65, together with interest thereon from February 27, 1943, at the rate of 6% per annum until paid.

OTTO KERNER, JR.
United States Attorney
LEROY R. KREIN
Assistant United States Attorney.

5 In the United States District Court

(Title Omitted)

Answer of Maria Melitona Sanchez—Filed March 14, 1949

The defendant, Maria Melitona Sanchez, answers the complaint as follows:

Neither admits nor denies the allegations as contained in paragraph one of said complaint, as defendant herein has no personal knowledge of same.

Admits the allegations as set forth in paragraphs two and three of said complaint.

Neither admits nor denies that on February 27, 1943, the Commissioner of Internal Revenue assessed the amount of $8,701.65 upon alleged transfers of marihuana allegedly made by defendant herein on the 13th, 14th and 16th days of January, 1943, as alleged in paragraph four of said complaint, and further that if said assessment was made that said assessment is unlawful and unjust, and wrongfully made.

That defendant herein is not indebted to nor does she owe the said Commissioner of Internal Revenue the amount of $8,701.65, or any sum whatsoever.

That for further defense, the defendant herein alleges that the cause of action stated in the complaint for said sum of $8,701.65 did not accrue to the plaintiff within the statutory period allowed for same and that, therefore, said action is barred by the Statute of Limitations.

WHEREFORE, the defendant, not being indebted to the plaintiff in the sum of $8,701.65 or any sum whatsoever, respectfully requests that said cause of action be dismissed, and without costs.

MARIA M. SANCHEZ
Defendant

7 In the United States District Court

(Title Omitted)

Answer of Armand Mota—Filed March 14, 1949

The defendant, Armand Mota, answers the complaint as follows:

Neither admits nor denies the allegations as contained in paragraph one of said complaint, as defendant herein has no personal knowledge of same.

Admits the allegations as set forth in paragraphs two and three of said complaint.

Neither admits nor denies that on February 27, 1943, the Commissioner of Internal Revenue assessed the amount of $8,701.65 upon alleged transfers of marihuana allegedly made by defendant herein on the 13th, 14th and 16th days of January, 1943, as alleged in paragraph four of said complaint, and further that if said assessment was made that said assessment is unlawful and unjust, and wrongfully made.

Denies that he is indebted to the plaintiff upon the alleged assessment made upon him by the Commissioner of Internal Revenue in the sum of $8,701.65, or any sum whatsoever.

That for further defense, the defendant herein alleges that the cause of action stated in the complaint for said sum of $8,701.65 did not accrue to the plaintiff within the statutory period allowed for same and that, therefore, said action is barred by the Statute of Limitations.

WHEREFORE, the defendant respectfully requests that said cause be dismissed, and without costs.

ARMAND MOTA
Defendant

9 3-28-50 BARNES, J.

In the United States District Court
For the Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA,
vs.
MRS. MARIA MELITONA SANCHEZ and ARMAND MOTA.
No. 49 C 298.

Order Dismissing Complaint
March 28, 1950

This cause this day being called for trial come the parties to this suit by their attorneys, respectively, whereupon, the defendants by counsel enter their motion to dismiss the complaint and the Court being fully advised in the premises said motion is granted and it is

ORDERED that the complaint be and it is hereby dismissed.

11 In the United States District Court
Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
MRS. MARIA MELITONA SANCHEZ and ARMAND MOTA,
DEFENDANTS.

No. 49 C. 298.

Transcript of Proceedings—Filed April 25, 1950

had in the above-entitled cause before the Honorable John P. Barnes, one of the Judges of said Court, in his court room in the United States Court House at Chicago, Illinois, on March 28, 1950, beginning at 10:00 o'clock a. m.

PRESENT:

HON. OTTO KERNER, JR., United States District Attorney, represented by JOHN A. LOOBY, JR., ESQ., Assistant United States Attorney, and JAMES P. GARLAND, ESQ., of the Department of Justice, Washington, D. C., on behalf of plaintiff;

SAMUEL H. BLOCK, ESQ., (10 N. Clark St., Chicago 2, Ill.), on behalf of defendants.

And thereupon the following proceedings were had herein:

By the CLERK: No. 49 C. 298. United States of America v. Mrs. Maria Melitona Sanchez and Armand Mota, defendants.

By Mr. LOOBY: The Government is ready, if your Honor please.

12 Your Honor, may I present James P. Garland, of the Department of Justice, who will handle the prosecution.

By Mr. BLOCK: Your Honor, we are ready, but I have deposition to take, and I would like to have this set for two o'clock, if we could change it. I don't know a thing about this.

By the COURT: What kind of a case is it?

By Mr. GARLAND: A tax case, your Honor, a civil case.

By the COURT: How long will it take?

By Mr. BLOCK: Oh, I don't think more than a half an hour.

By Mr. GARLAND: I don't think it will take more than half an hour or an hour.

By the COURT: Two o'clock.

By Mr. GARLAND: Yes, thank you, your Honor.

By the COURT: Very well.

(Whereupon the further hearing of the above-entitled cause was continued until 2:00 o'clock p. m. of the same day, March 28, 1950.)

* * * * *

And thereupon the following further proceedings were had herein:

By the CLERK: No. 49 C. 298. United State of America v. Mrs. Maria Melitona Sanchez and Armand Mota.

By the COURT: Proceed.

13 By Mr. GARLAND: May it please the Court, this case involves a tax on marihuana.

Your Honor had the case of Tovar, I think you may recall, in which the Circuit Court for the Seventh Circuit held that the tax of $100 an ounce was a penalty and not a tax. I call that to the court's attention now.

However, we would like in this case, with the court's permission, to make a *prima facie* case by putting in the assessment list, and the other material we have here, which will take but a few minutes, so that in the event of an ultimate disposition of this case in favor of the Government—that is, on the assumption that your Honor will doubtless follow the Circuit Court of Appeals decision to the effect that this tax is a penalty, and unconstitutional, so that in the event this case does go to the Circuit Court—this case here that is before your Honor now, the Government will have a *prima facie* case, and it will not be sent back if the Government should prevail there.

I have talked to counsel about it.

By the COURT: Why didn't you take the other one up?

By Mr. GARLAND: Well, we did not like the record in that case. There was a purported unlawful search and seizure. Now, that was the reason why we did not petition for certiorari there.

Now, it is a very important question, as your Honor well knows.

14 By the COURT: Oh, well, I didn't like the way you handled it, important or unimportant.

By Mr. GARLAND: I just called that court's decision to your Honor's attention.

There is no motion filed here by counsel for the defendants to dismiss.

In view of that we would like, despite this decision of the Seventh Circuit, as I say, merely to put in the assessment list.

By the COURT: I don't like it. You were very anxious to maintain that assessment, which was unjust.

By Mr. GARLAND: My personal opinion is that we should have filed a petition for certiorari, but unfortunately I am not the one to decide that.

I am just trying to explain why, as I understand it, there was no petition for certiorari filed in that case.

By Mr. BLOCK: I would like to make a motion at this time, to dismiss.

By the COURT: On what ground?

By Mr. BLOCK: In view of the decision of the Court in the case of Tovar v. Jarecki, your Honor.

By the COURT: Why shouldn't it be granted?

By Mr. GARLAND: As I say, with the court's permission, I think it is within the court's discretion to permit us to make a *prima facie* showing.

15 By the COURT: You folks never do anything that I want you to do. I don't know whether I should do anything that you want me to do, if it is a mere favor to you. If it is a right you ask for it and I will grant it.

By Mr. GARLAND: I cannot say that it is a right, your Honor.

By the COURT: You are insisting on dragging a poor woman up to the Circuit Court of Appeals.

That was an outrageous case, and you know it if you have looked into the record.

By Mr. GARLAND: Yes.

By the COURT: You know it was an outrageous case, and this may be another one like it.

By Mr. BLOCK: Just exactly the same, your Honor, in my opinion.

By Mr. GARLAND: Of course this case doesn't have the question in it as to whether or not the evidence was obtained unlawfully.

By the COURT: What is your motion?

By Mr. BLOCK: Motion to dismiss, your Honor.

By the COURT: Do you know of any reason why it should not be granted?

By Mr. GARLAND: We are not going to try to distinguish this case.

By the COURT: Do you know of any reason why that motion should not be granted?

By Mr. GARLAND: No, your Honor.

By the COURT: Let it be granted.

By Mr. BLOCK: Thank you, your Honor.

(Which were all of the proceedings had upon the hearing of the above-entitled cause.)

16 Reporter's Certificate to foregoing transcript omitted in printing.

18 In the Supreme Court of the United States

October Term, 1949

(Title Omitted)

Petition for Appeal—Filed April 28, 1950

The United States of America, plaintiff-appellant in the above-entitled cause, considering itself aggrieved by the final judgment of the United States District Court for the Northern District of Illinois, entered on the twenty-eighth day of March, 1950, does hereby pray an appeal from said final judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the United States presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff-appellant considers the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff-appellant prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents

19 upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

PHILIP B. PERLMAN
Philip B. Perlman,
Solicitor General.

Dated this 27th day of April, 1950.

21 In the Supreme Court of the United States

October Term, 1949

(Title Omitted)

Assignment of Errors—Filed April 28, 1950

The United States of America, plaintiff-appellant, in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of

the final decree in the United States District Court for the Northern District of Illinois on March 28, 1950, in the above-entitled cause, and says that in the entry of the final decree the District Court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in granting judgment for the defendants.

2. The court erred in failing and refusing to hold valid and constitutional the provisions of Section 2590 (a) (2) of the Internal Revenue Code (26 U. S. C. 1946 ed., Sec. 2590) imposing a tax of $100 an ounce of marihuana upon the transfer thereof to persons who have not paid the special tax and registered under Sections 3230 and 3231 of the Internal Revenue Code (26 U. S. C. 1946 ed., Secs. 3230 and 3231).

22 3. The court erred in holding that the tax imposed by Section 2590 (a) (2) of the Internal Revenue Code upon transfers of marihuana to persons who have not paid the special tax and registered under Sections 3230 and 3231 of the Internal Revenue Code is unconstitutional.

PHILIP B. PERLMAN
Philip B. Perlman,
Solicitor General.

Dated this 27th day of April, 1950.

32 Supreme Court of the United States

No. ....., October Term, 1949.

(Title Omitted)

Order Allowing Appeal—Filed April 28, 1950

UPON CONSIDERATION of the application of the appellant herein for the allowance of an appeal from the judgment entered herein by the United States District Court for the Northern District of Illinois on March 28, 1950, and it appearing that the appellant has filed a petition for appeal, assignments of error and jurisdictional statement, as required by the rules of this Court,

IT IS ORDERED that an appeal be, and the same hereby is, allowed, and it is further ordered that the Clerk of the District Court certify and send to this Court a certified transcript of the record within forty days from the date hereof.

HERMAN MINTON
Associate Justice of the Supreme Court of the United States.

Dated this 27th day of April, 1950.

(File Endorsement Omitted)

36 In the United States District Court
(Title Omitted)

Praecipe for Transcript of Record—Filed April 28, 1950

To: The Clerk of the United States District Court for the Northern District of Illinois Eastern Division

Plaintiff, United States of America, hereby requests you to make a transcript of record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above-entitled cause on its behalf and to include in such transcript of record the following:

1. Docket entries.
2. Complaint.
3. Answer of Maria Melitona Sanchez.
4. Answer of Armand Mota.
5. Order dismissing complaint.
6. Transcript of proceedings before District Court on March 28, 1950.
7. Final judgment dismissing complaint.
8. Petition for appeal, dated April 27, 1950.
9. Assignment of errors, dated April 27, 1950.

37 10. Statement as to jurisdiction of the United States, dated April 27, 1950.

11. Order allowing appeal to the Supreme Court, dated April 27, 1950.
12. Citation on appeal, dated April 27, 1950.
13. Notice calling attention to the provisions of Supreme Court Rule 12(3), dated April 27, 1950.
14. Proof of service of appeal papers.
15. Certificates of service of appeal papers.
16. This praecipe.
17. Proof of service of this praecipe.
18. Certificate of service of this praecipe.
19. Clerk's certificate.

Said transcript is to be prepared as required by law and the rules of the Supreme Court of the United States, and is to be filed in the office of the Clerk of the Supreme Court.

OTTO KERNER, JR.
Otto Kerner, Jr.,
United States Attorney.

Dated April 27, 1950.

United States of America ss:

39 Citation in usual form showing service on Maria Melitona Sanchez and Armand Mota, filed May 4, 1950, omitted in printing.

40 *The Following Are the Docket Entries to and Including May 4, 1950.*

D. C. Form No. 106 A

Judge Barnes Calendar

49C 298 Docket 49C 298

Title of Case	Attorneys
United States of America, *Plaintiff*, vs. (D) Mrs. Maria Melitona Sanchez and Armand Mota, *Defendants*.	*For Plaintiff:* Otto Kerner, Jr., U. S. Atty. *For Defendant:* Samuel H. Block 10 N. Clark St. FRanklin 2-4897

Basis of action: Suit to recover judgment of $8,701.65 and interest, representing assessment made upon transfers of marihuana made by Defts. in 1943.

Jury trial claimed by

41 49C 298

Date	Filings-Proceedings	Clerk's Fees Plaintiff	Clerk's Fees Defendant
2-21-49	Filed complaint and (2) copies (2) (JS-5)	15.00	
2-21-49	Issued summons and (2) copies with copies of complaint g		
3-1-49	Filed summons returned served. 2 serv. $4.48 jb		
3-8-49	On motion pltff. order cause placed on passed case calendar.—Barnes, J. Mld. notice to attys. 3-10-49 Z		
3-14-49	Filed Appearance of Maria Melitona Sanchez & Armand Mota as defts. & Samuel H. Block as attys.		
" " "	Filed *Answer* of Maria Melitona Sanchez. (2)		
" " "	Filed *Answer* of Armand Mota. (2) Z		
4-12-49	On mo. Govt. Ord. cs. placed on passed case cal.—Barnes, J. Mld. note. to attys., 4-18-49. r		

5-10-49	On motion of pltf. order cause placed on passed case calendar—Barnes, J.		
	Mld notice to attys 5-17-49	P	
6-14-49	On motion of pltff. order cause set for trial on Oct. 26, 1949—Barnes, J.		
	Mld. notice to attys. 6-21-49	Z	
10-26-49	On motion of pltf. ord. cs. cont'd. for tr. to 12-5-49—Barnes, J.		
	Mld. notice to attys 10-27-49	P	
12-22-49	On mo. Govt. ord. cs. cont. for tr. to Jan. 24, 1950—Barnes, J.		
	Mld. notice to attys. 12-30-49	jb	
3-28-50	Cause called for tr. Order defts' mo. to dism. complt. granted and said complt. dismd.—Barnes, J. (JS6)		
	Mld. notice to attys. 3-29-50	jb	
3-30-50	Filed Witness Subpoena of Paul D. Newey retd served. $.50.		
" " "	Filed Witness Card of Paul D. Newey—1 day—12 mi.— pd. $4.84. r		
4-26-50	Issued C. C. of Docket Entries and Order of Dismissal of March 28, 1950 to U. S. Attorney.		1.20 US
4-25-50	Filed Transcript of proceedings of hearing held Mar. 28, 1950 (9) k.		
4-28-50	Filed Petition for Appeal. (2)		5.00 US
4-27-50	Order allowing Appeal and Clerk to certify Transcript of record within 40 days from date hereof to the Supreme Court of the United States—DRAFT—Sherman Minton, Associate Justice of U. S. S. C. (Orig. order from U. S. S. C.) (1)		
	~~Mld. notice to attys. 4-28-50~~		
4-28-50	Filed Statement as to Jurisdiction. (3)		
" " "	Filed Statement calling attention to the Provisions of Supreme Court Rule 12 (3) (1)		
" " "	Filed Assignment of Errors. (2)		
" " "	Filed Praecipe. (2)	P	
5-4-50	Filed Citation ret'd. served. 2 services $4.60		

42 Clerk's Certificate to foregoing transcript omitted in printing.

43 In the Supreme Court of the United States

Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration Thereof—Filed June 12, 1950

Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely on its appeal in this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. The entire record in this cause as filed in this Court pursuant to the Appellant's praecipe to the Clerk of the United States District Court for the Northern Disrict of Illinois is necessary for the consideration of the foregoing points and Appellant designates said entire record for printing by the Clerk of this Court.

PHILIP B. PERLMAN

Philip B. Perlman,
Solicitor General.

Dated June 12, 1950.

44 I hereby certify that I have this day served a copy of the foregoing Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration Thereof on counsel for the Appellees by mailing a copy to Samuel H. Block, 10 N. Clark Street, Chicago 2, Illinois, counsel for the Appellees.

PHILIP B. PERLMAN

Philip B. Perlman,
Solicitor General.

(File Endorsement Omitted June 12, 1950.)

45 Supreme Court of the United States

No. 81, October Term, 1950

Order Noting Probable Jurisdiction—June 5, 1950

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

U. S. GOVERNMENT PRINTING OFFICE 862124 NO. 42 1950